

Under 17(c)(1) the acquisition of voting stock of a corporation (other than one holding exempt realty) is not exempt even though the acquisition of assets by themselves would be exempt.

HAEXY
FO2.20
FO2.64

October 29, 1991

Under FO2.20 we look at total assets, including cash, + not net asset amount + the subject transaction is not exempt under FO2.64 to acquire 10% of the voting stock.

Section 7A... which restricts... Freedom of Information Act

series BYU inter

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

By Messenger

Attention: Mr. Victor Cohen

Gentlemen:

On behalf of our client, [redacted] we seek the informal advice of the staff of the Federal Trade Commission as to the applicability of the requirements of the Hart-Scott Rodino Antitrust Improvements Act of 1976

in connection with the proposed transaction described below.

[redacted] currently intends to purchase from [redacted]

[redacted]. The anticipated purchase price is \$1,000.

[redacted] is a single purpose corporation formed in 1989 at the request of [redacted] in order to facilitate a production payment financing transaction by [redacted]. A production payment is similar to a royalty interest except that it expires upon payment of a specified amount rather than continuing for the productive life of the underlying property. The use of single purpose corporations such as [redacted] is customary in the oil and gas industry in connection with production payment financing because of limitations under applicable banking regulations on the ability of banks to own real estate. Thus, in the

conveys it to a single purpose corporation, which simultaneously borrows the

[REDACTED] assets consist solely of (i) an oil and gas production payment (the

[REDACTED] loan balance is identical to the Production Payment balance. Payments received by [REDACTED] in respect of the Production Payment are immediately applied to reduce the bank debt. Therefore, on the balance sheet of [REDACTED] the Production Payment is offset by a corresponding liability which at all times is equal to the value of the Production Payment; thus the total net assets of [REDACTED] equal approximately \$1,000.

The underlying oil and gas leases that are burdened by the Production Payment are operated by [REDACTED] and/or its industry partners. [REDACTED] as the holder of the

As is typical in production payment financings, [REDACTED] has, and [REDACTED] will

annually, and [REDACTED] annually thereafter until the Production Payment terminates. In effect, the [REDACTED] in return for holding the stock of [REDACTED]

The parties have determined to effect the transfer as a stock transaction because an asset transfer would require that (i) a new single purpose subsidiary be formed by [REDACTED] (ii) new loan documents be prepared and (iii) a reconveyance of the Production Payment occur, all of which would require significant expenditures.

For purposes of the Act's size of person test under Section 7(A)(a)(2) of the Act, [REDACTED] would be considered a "person which has total assets of \$100,000,000 or more" and [REDACTED] although its net value is only \$1,000, would be considered a "person not engaged in manufacturing which has total assets of \$10,000,000 or more".

Although the size of the transaction test under Section 7A(a)(3) is nominally met because more than 15% of the stock of [REDACTED] is being acquired, it is our view that under the particular circumstances of this transaction, the minimum dollar value

[REDACTED]

Under previous informal interpretations of the staff, it is our understanding that the Production Payment would be considered a contract right for the payment of cash

stock of [redacted] assets do not exceed the minimum dollar value requirements set forth under Rule 802.20.

Both [redacted] and [redacted] are tax-exempt organizations under Section 501(c)(3)

Transaction described above would not be subject to the filing requirements of the Act because the Production Payment represents a contract right for the payment of cash and in the context of the proposed transaction would not constitute an asset for purposes of the size of the transaction test.

We appreciate your attention to this letter at your earliest convenience. Please address any questions or comments you may have on this matter to the undersigned at [redacted]

Very truly yours,

[redacted signature block]

[redacted]

[REDACTED]

Premerger Notification Office

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October 29, 1991

[REDACTED]

cc:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]